

It is not clear as to what uses these statistics are applied but it is reasonable to assume that they are applied to fulfill the goal of the arrangement which, as explained in the Summary section, is to enforce that the allotments of data transfer are not violated, within the context of fixed partition implementations, or burstable partition implementations (see col. 6, lines 63 to col. 7, line 27).

Upon review, applicants believe that the use of these statistics is actually quite clear; and comports with applicants' above-quoted assertion, because at col. 8, lines 6-10 the reference teaches:

In one embodiment, measurement engine 140 periodically recalculates bandwidth utilization statistics for each IP address and stores them in corresponding fields in host database 134. In one embodiment, such periodic sampling can occur every minute. As discussed below, this measurement data can then be analyzed over a desired time interval (e.g., by minute, quarter-hour, hour, half-day, day, etc.) to enable effective decision-making with respect to bandwidth utilization controls applied to individual users.

The above teaches that the information of engine 140 is used to determine the statistics applicable to a user, and this developed information is used in the decision-making with respect to the bandwidth utilization control applied to individual users. Applicants respectfully submit that the above-described statistics are not used to create a set of rules that are used to specify a QoS treatment.

The Examiner ends point 23 by stating that he disagrees with applicants' argument, but at point 24 the Examiner *does not actually assert* that any rules are created from the measurements of engine 140. Rather, the Examiner asserts that Ford discloses a measurement engine 140 within bandwidth management device 30 that samples data flows measuring bandwidth utilization with respect to a plurality of utilization statistics (which, as indicated above, applicants did not disagree with), and that each traffic class has bandwidth utilization controls.

Respectfully, there may be utilization measurements, and bandwidth utilization controls, but that does NOT mean that a set of rules is created pursuant to a statistical analysis of the traffic; and this is particularly true in this case, where the statistical analysis (if one is to call the collection of utilization statistics "statistical analysis") is applied to the decision making with respect to **individual users**.

The Examiner also states in point 24 that

The rule of degrading performance for quarantined users creates the corresponding rule of ensuring appropriate bandwidth usage for non-quarantined users (based on utilization statistics) [col. 9, lines 27-41].

Applicants respectfully disagree. What the passage cited by the Examiner teaches is an action may be chosen to be taken as a consequence of exceeding a data transfer allotment or threshold. While it is not unreasonable for the Examiner to call that a "rule," it should be noted that this "rule" is activated when a predetermined condition occurs (exceeding a data transfer allotment or threshold). It is a fixed rule, and it is a rule that is NOT a rule that is created pursuant to a statistical analysis.

A proper characterization, in applicants' view, is that the reference has is a fixed rule, and that this rule assigns a treatment to a packet flow based on statistics of that packet flow. In a nutshell, *the rule calls for different actions applied to a flow based on statistics of that flow, but there is no teaching of creating a set of rules based on "traffic in the network."*

Stated in other words, the claim 1 limitation of "assigning the packet to one of a preselected of QoS treatments, based on an attribute the packet, in accordance with a set of rules that was created pursuant to a statistical analysis of traffic in the network" is NOT taught by the reference and, therefore, claim 1 is not anticipated by the Ford reference, and neither are the claims that depend on claim 1.

In light of the above amendments and remarks, applicants respectfully submit that all of the Examiner's rejections have been overcome. Reconsideration and allowance are respectfully solicited.

Respectfully,
Nicolas G. Duffield
Matthew Roughan
Subhabrata Sen
Oliver Spatscheck

Dated: 8/26/08

By 

Henry T. Brendzel
Reg. No. 26,844
Phone (973) 467-2025
Fax (973) 467-6589
email brendzel@comcast.net